

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Up The Creek placer mining claim null and void ab initio. ORMC 150421.

Vacated and remanded.

1. Mining Claims: Lands Subject to--Segregation

A BLM decision declaring a relocated mining claim null and void ab initio because the lands on which it was located were segregated from mineral entry by a proposed withdrawal notice is properly vacated where it appears that the notice covered only named lands situated outside the mining claim. Where the notice expressly refers to the same claim name (with an earlier serial number) as the relocated claim, BLM is properly directed to determine the extent of the earlier claim and whether that area was excluded from the segregation as of the date of relocation.

APPEARANCES: Susan P. Weeks, Esq., Coeur d'Alene, Idaho, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE HUGHES

George A. Lehman has appealed from the June 24, 1996, Decision of the Oregon State Office, Bureau of Land Management (BLM or Bureau) declaring the Up The Creek placer mining claim (ORMC 150421) null and void ab initio to the extent that the claim is "located within the proposed White Pass Ski Area (OR 50892WA), S½ Section 36, Township 14 North, Range 11 East, Willamette Meridian, Yakima County, Washington," because the land is not subject to location under the general mining laws.

On appeal, Lehman asserts that the claim does not fall within the area described in the notice. We agree that the present record suggests that the lands covered by the relocated Up The Creek claim were not segregated.

[1] The township in which the claim is located, T. 14 N., R. 11 E., Willamette Meridian, is unsurveyed. This fact presumably explains why the notice of location for the claim contains a description of the claim that is tied to Mineral Survey (MS) No. 1326, rather than describing the land according to the public land survey system.

The notice of location is actually styled "Relocation Notice for 'Up The Creek Placer Mining Claim.'" It indicates that the claim "was originally described and recorded in volume H page 560 (1999994) of the records in the office of Yakima County Auditor, Yakima, Washington, dated 6/22/64." The notice also indicates that the claim had been relocated previously on October 18, 1979. The notice does not explain why the claim was being relocated.

The Bureau's MT/USE plat for the unsurveyed township is a protraction diagram. It depicts MS 1326 as covering the N $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 36 of the protracted township. Lehman's claim (ORMC 150421) would approximately cover the SW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 36 of the protracted township. The protraction diagram also depicts boundaries for the "White Pass Ski Area Prop" (OR 50892 W) covering all of what would be the SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ of sec. 36 of the protracted township. If correctly depicted, that area would conflict with approximately half of the Up The Creek claim. The Serial Register Page for OR 50892 refers to the proposed withdrawal notice.

That notice, published on July 8, 1994, in the Federal Register, strongly suggests that the lands covered by the Up The Creek claim were not segregated at the time the claim in question was located. That notice affected the following lands in sec. 36: "[T]hose portions of the S $\frac{1}{4}$ SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying outside the William O. Douglas Wilderness Area and outside the three unpatented mining claims known as Cover All Bets (ORMC-30522), Up The Creek (ORMC-30523), and Spiral View (ORMC-111969)." (Emphasis added.) It thus appears that, if the area covered by the relocated Up The Creek claim (ORMC 150421) is the same as that covered by the Up The Creek claim referred to in the Federal Register Notice (ORMC 30523), BLM's Decision is in error, as the segregative effect of the notice, by its own terms, covers only lands outside the Up The Creek claim (ORMC 30523).

In these circumstances, it is appropriate to vacate BLM's Decision and remand the matter with instructions to determine the extent of the lands covered by the Up The Creek claim (ORMC 30523) and to reevaluate whether the relocated Up The Creek claim (ORMC 150421) was situated on lands segregated from mineral entry on the date of relocation.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is vacated and the case is remanded.

David L. Hughes
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge